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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

GURI GONZALEZ,  
Plaintiff,  
vs.

JENI'S SPLENDID ICE CREAMS, LLC;  
and DOES 1 to 10,  
Defendants.

**Case No.:**

**COMPLAINT FOR INJUNCTIVE  
RELIEF AND DAMAGES FOR  
VIOLATION OF:**

1. AMERICANS WITH DISABILITIES  
ACT, 42 U.S.C. §12131 et seq.;
2. CALIFORNIA'S UNRUH CIVIL  
RIGHTS ACT, CAL CIV. CODE §§ 51 -  
52 et seq.;
3. CALIFORNIA'S DISABLED  
PERSONS ACT, CAL CIV. CODE §54 et  
seq.
4. CALIFORNIA HEALTH & SAFETY  
CODE § 19955, et seq.
5. NEGLIGENCE

Plaintiff GURI GONZALEZ ("Plaintiff") complains of Defendants JENI'S  
SPLENDID ICE CREAMS, LLC; and DOES 1 to 10 ("Defendants") and alleges as  
follows:

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**PARTIES**

1  
2 1. Plaintiff is a California resident with a physical disability with substantial  
3 limitation in his ability to walk. Plaintiff suffers from complete tetraplegia due to lesion  
4 at C5-C7 level and requires the use of a wheelchair at all times when traveling in public.

5 2. Defendants are, or were at the time of the incident, the real property owners,  
6 business operators, lessors and/or lessees of the real property for a JENI'S SPLENDID  
7 ICE CREAMS ("Business") located at or about 123 N. Larchmont Blvd. Los Angeles,  
8 California.

9 3. The true names and capacities, whether individual, corporate, associate or  
10 otherwise of Defendant DOES 1 to 10, and each of them, are unknown to Plaintiff, who  
11 therefore sues said Defendants by such fictitious names. Plaintiff will ask leave of Court  
12 to amend this Complaint when the true names and capacities have been ascertained.  
13 Plaintiff is informed and believes and, based thereon, alleges that each such fictitiously  
14 named Defendants are responsible in some manner, and therefore, liable to Plaintiff for  
15 the acts herein alleged.

16 4. Plaintiff is informed and believes, and thereon alleges that, at all relevant  
17 times, each of the Defendants was the agent, employee, or alter-ego of each of the other  
18 Defendants, and/or was acting in concert with each of the other Defendants, and in doing  
19 the things alleged herein was acting with the knowledge and consent of the other  
20 Defendants and within the course and scope of such agency or employment relationship.

21 5. Whenever and wherever reference is made in this Complaint to any act or  
22 failure to act by a defendant or Defendants, such allegations and references shall also be  
23 deemed to mean the acts and failures to act of each Defendant acting individually, jointly  
24 and severally.

**JURISDICTION AND VENUE**

25  
26 6. The Court has jurisdiction of this action pursuant to 28 USC §§ 1331 and  
27 1343 for violation of the Americans with Disabilities Act of 1990, (42 USC §12101, *et*  
28 *seq.*)

8. Plaintiff's claims are authorized by 28 USC §§ 2201 and 2202.

## FACTUAL ALLEGATIONS

11. The Business is an ice cream shop business establishment, open to the public, and is a place of public accommodation and affects commerce through its operation. Defendants provide restroom for customers.

13. To the extent of Plaintiff's personal knowledge, the barriers at the Business included, but were not limited to, the following:

14. These barriers and conditions denied Plaintiff the full and equal access to the Business and caused his difficulty and frustration. Plaintiff wishes to return and patronize the Business, however, Plaintiff is deterred from visiting the Business because his knowledge of these violations prevents him from returning until the barriers are removed.



1 such goods, services, facilities, privileges, advantages, or  
2 accommodations. 42 U.S.C. § 12182(b)(2)(A)(ii).

3 b. A failure to take such steps as may be necessary to ensure that no  
4 individual with a disability is excluded, denied services, segregated or  
5 otherwise treated differently than other individuals because of the  
6 absence of auxiliary aids and services, unless the entity can  
7 demonstrate that taking such steps would fundamentally alter the  
8 nature of the good, service, facility, privilege, advantage, or  
9 accommodation being offered or would result in an undue burden. 42  
10 U.S.C. § 12182(b)(2)(A)(iii).

11 c. A failure to remove architectural barriers, and communication barriers  
12 that are structural in nature, in existing facilities, and transportation  
13 barriers in existing vehicles and rail passenger cars used by an  
14 establishment for transporting individuals (not including barriers that  
15 can only be removed through the retrofitting of vehicles or rail  
16 passenger cars by the installation of a hydraulic or other lift), where  
17 such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv).

18 d. A failure to make alterations in such a manner that, to the maximum  
19 extent feasible, the altered portions of the facility are readily  
20 accessible to and usable by individuals with disabilities, including  
21 individuals who use wheelchairs or to ensure that, to the maximum  
22 extent feasible, the path of travel to the altered area and the  
23 bathrooms, telephones, and drinking fountains serving the altered  
24 area, are readily accessible to and usable by individuals with  
25 disabilities where such alterations to the path or travel or the  
26 bathrooms, telephones, and drinking fountains serving the altered  
27 area are not disproportionate to the overall alterations in terms of cost  
28 and scope. 42 U.S.C. § 12183(a)(2).

1 21. Toilet flush controls shall be hand operated or automatic. Hand operated  
2 flush controls shall comply with 309. Flush controls shall be located on the open side of  
3 the water closet. 2010 ADA Standards § 604.6.

4 22. Here, Defendants failed to install a proper flush control as the one provided  
5 was not installed on the open side.

6 23. A public accommodation shall maintain in operable working condition those  
7 features of facilities and equipment that are required to be readily accessible to and usable  
8 by persons with disabilities by the Act or this part. 28 C.F.R. 35.211(a).

9 24. By failing to maintain the facility to be readily accessible and usable by  
10 Plaintiff, Defendants are in violation of Plaintiff's rights under the ADA and its related  
11 regulations.

12 25. The Business has denied and continues to deny full and equal access to  
13 Plaintiff and to other people with disabilities. Plaintiff has been and will continue to be  
14 discriminated against due to the lack of accessible facilities, and therefore, seeks  
15 injunctive relief to alter facilities to make such facilities readily accessible to and usable  
16 by individuals with disabilities.

17 **SECOND CAUSE OF ACTION**

18 **VIOLATION OF THE UNRUH CIVIL RIGHTS ACT**

19 26. Plaintiff incorporates by reference each of the allegations in all prior  
20 paragraphs in this complaint.

21 27. California Civil Code § 51 states, "All persons within the jurisdiction of this  
22 state are free and equal, and no matter what their sex, race, color, religion, ancestry,  
23 national origin, disability, medical condition, genetic information, marital status, sexual  
24 orientation, citizenship, primary language, or immigration status are entitled to the full  
25 and equal accommodations, advantages, facilities, privileges, or services in all business  
26 establishments of every kind whatsoever."

27 28. California Civil Code § 52 states, "Whoever denies, aids or incites a denial,  
28 or make any discrimination or distinction contrary to Section 51, 515, or 51.6, is liable

1 for each and every offense for the actual damages, and any amount that may be  
2 determined by a jury, or a court sitting without a jury, up to a maximum of three times the  
3 amount of actual damage but in no case less than four thousand dollars (\$4,000) and any  
4 attorney's fees that may be determined by the court in addition thereto, suffered by any  
5 person denied the rights provided in Section 51, 51.5, or 51.6.

6 29. California Civil Code § 51(f) specifies, "a violation of the right of any  
7 individual under federal Americans with Disabilities Act of 1990 (Public Law 101-336)  
8 shall also constitute a violation of this section."

9 30. The actions and omissions of Defendants alleged herein constitute a denial  
10 of full and equal accommodation, advantages, facilities, privileges, or services by  
11 physically disabled persons within the meaning of California Civil Code §§ 51 and 52.  
12 Defendants have discriminated against Plaintiff in violation of California Civil Code §§  
13 51 and 52.

14 31. The violations of the Unruh Civil Rights Act caused Plaintiff to experience  
15 difficulty, discomfort, or embarrassment. The Defendants are also liable for statutory  
16 damages as specified in California Civil Code §55.56(a)-(c).

17 **THIRD CAUSE OF ACTION**

18 **VIOLATION OF CALIFORNIA DISABLED PERSONS ACT**

19 32. Plaintiff incorporates by reference each of the allegations in all prior  
20 paragraphs in this complaint.

21 33. California Civil Code § 54.1(a) states, "Individuals with disabilities shall be  
22 entitled to full and equal access, as other members of the general public, to  
23 accommodations, advantages, facilities, medical facilities, including hospitals, clinics,  
24 and physicians' offices, and privileges of all common carriers, airplanes, motor vehicles,  
25 railroad trains, motorbuses, streetcars, boats, or any other public conveyances or modes  
26 of transportation (whether private, public, franchised, licensed, contracted, or otherwise  
27 provided), telephone facilities, adoption agencies, private schools, hotels, loading places,  
28 places of public accommodations, amusement, or resort, and other places in which the

1 general public is invited, subject only to the conditions and limitations established by  
2 law, or state or federal regulation, and applicable alike to all persons.

3 34. California Civil Code § 54.3(a) states, “Any person or persons, firm or  
4 corporation who denies or interferes with admittance to or enjoyment of public facilities  
5 as specified in Sections 54 and 54.1 or otherwise interferes with the rights of an  
6 individual with a disability under Sections 54, 54.1 and 54.2 is liable for each offense for  
7 the actual damages, and any amount as may be determined by a jury, or a court sitting  
8 without a jury, up to a maximum of three times the amount of actual damages but in no  
9 case less than one thousand dollars (\$1,000) and any attorney’s fees that may be  
10 determined by the court in addition thereto, suffered by any person denied the rights  
11 provided in Section 54, 54.1, and 54.2.

12 35. California Civil Code § 54(d) specifies, “a violation of the right of an  
13 individual under Americans with Disabilities Act of 1990 (Public Law 101-336) also  
14 constitute a violation of this section, and nothing in this section shall be construed to limit  
15 the access of any person in violation of that act.

16 36. The actions and omissions of Defendants alleged herein constitute a denial  
17 of full and equal accommodation, advantages, and facilities by physically disabled  
18 persons within the meaning of California Civil Code § 54. Defendants have  
19 discriminated against Plaintiff in violation of California Civil Code § 54.

20 37. The violations of the California Disabled Persons Act caused Plaintiff to  
21 experience difficulty, discomfort, and embarrassment. The Defendants are also liable for  
22 statutory damages as specified in California Civil Code §55.56(a)-(c).

23 **FOURTH CAUSE OF ACTION**

24 **CALIFORNIA HEALTH & SAFETY CODE § 19955, et seq.**

25 38. Plaintiff incorporates by reference each of the allegations in all prior  
26 paragraphs in this complaint.

27 39. Plaintiff and other similar physically disabled persons who require the use of  
28 a wheelchair are unable to use public facilities on a “full and equal” basis unless each

1 such facility is in compliance with the provisions of California Health & Safety Code §  
2 19955 et seq. Plaintiff is a member of the public whose rights are protected by the  
3 provisions of California Health & Safety Code § 19955 et seq.

4 40. The purpose of California Health & Safety Code § 1995 et seq. is to ensure  
5 that public accommodations or facilities constructed in this state with private funds  
6 adhere to the provisions of Chapter 7 (commencing with Section 4450) of Division 5 of  
7 Title 1 of the Government Code. The code relating to such public accommodations also  
8 require that “when sanitary facilities are made available for the public, clients, or  
9 employees in these stations, centers, or buildings, they shall be made available for  
10 persons with disabilities.

11 41. Title II of the ADA holds as a “general rule” that no individual shall be  
12 discriminated against on the basis of disability in the full and equal enjoyment of goods  
13 (or use), services, facilities, privileges, and accommodations offered by any person who  
14 owns, operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).  
15 Further, each and every violation of the ADA also constitutes a separate and distinct  
16 violation of California Civil Code §§ 54(c) and 54.1(d), thus independently justifying an  
17 award of damages and injunctive relief pursuant to California law, including but not  
18 limited to Civil Code § 54.3 and Business and Professions Code § 17200, et seq.

19 **FIFTH CAUSE OF ACTION**

20 **NEGLIGENCE**

21 42. Plaintiff incorporates by reference each of the allegations in all prior  
22 paragraphs in this complaint.

23 43. Defendants have a general duty and a duty under the ADA, Unruh Civil  
24 Rights Act and California Disabled Persons Act to provide safe and accessible facilities  
25 to the Plaintiff.

26 44. Defendants breached their duty of care by violating the provisions of ADA,  
27 Unruh Civil Rights Act and California Disabled Persons Act.  
28

